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Atty. Dkt. No. 053466-0409

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Osamu OKUDA et al.

Title: METHODS FOR TREATING
INTERLEUKIN-6 RELATED DISEASES

Appl. No.: 10/554,407

International Filing Date: 4/28/2004

371(c) Date: 10/24/05

Patent No.: 7,521,052

Grant Date: 4/21/2009

Examiner: Prema Maria MERTZ

Art Unit: 1646

Conf. No.: 4578

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 4/21/2009 as U.S. Patent No. 7,521,052.

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

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year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 47 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	259 days
(b) Total Applicant delay:	212 days
Final PTA Determination:	47 days

Applicants therefore respectfully request that the patent be accorded 47 days PTA.

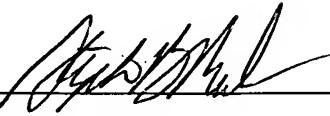
The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date APR 29 2009

By 

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Patent Term Adjustment Calculation System

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Docket Number: 053466-0409
 Application Number: 10/554407
 Patent Number: N/A



	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	04/28/2003	-910		
Edit Delete	International Filing Date	04/28/2004	-544		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	10/24/2005	0		
	PCT National Stage Commencement Date	10/24/2005	0		
	14 month From Application date	12/24/2006	426		
Edit Delete	Restriction Requirement	03/14/2007	506	80	
	Restriction Requirement + 3 months	06/14/2007	598		
Edit Delete	Restriction Requirement Response Received at PTO	07/16/2007	630		32
Edit Delete	Non-Final Office Action	10/19/2007	725		
	Non-Final Office Action + 3 months	01/19/2008	817		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/18/2008	907		90
Edit Delete	Final Office Action	06/03/2008	953		
	Final Office Action + 3 months	09/03/2008	1,045		
	3 Year Period Starts	10/24/2008	1,096		
Edit Delete	Notice of Appeal Received at PTO	12/02/2008	1,135		90
Edit Delete	Notice of Allowance	12/16/2008	1,149		
Edit Delete	Issue Fee Paid	03/10/2009	1,233		
Edit Delete	Patent Grant Date	04/21/2009	1,275	179	
			Totals:	259	212
			PTA:		47

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